CELLEXIS INTERNATIONAL, INC.

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January 13, 1998

JAN 14 1998

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Ms. Salas:

Please find attached our company's Position and Reply to Those Who Are In Opposition For Reconsideration Relating to WT Docket 97-82. As you will note in our reply, we represent the reseller community which continues to face significant challenges in our efforts to participate in wireless opportunities. We trust that the FCC will continue to seriously consider action to counter the A and B Block carriers anti-competitive behavior. We look forward to hearing your decision as soon as possible.

Sincerely,

CELLEXIS INTERNATIONAL, INC.

Larry L Day

Larry L. Day
Chief Financial Officer

LLD:lds

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JAN 14 1998

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Rules Regarding Installment Payment	)	
Financing For Personal Communications	)	
Services (PCS) Licensees	)	WT Docket No. 97-82
	)	

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Introduction

Cellexis International, Inc. ("Cellexis") respectfully submits reply comments in the above captioned proceeding.[1] We note that the majority of commenters in this proceeding, including Cellexis, have supported modest adjustments to the FCC's Restructuring Order.

Cellexis is one of the largest distributed prepaid wireless service providers in the U.S. The company currently provides its innovative wireless prepaid platform in several major markets throughout the U.S., including Boston, Phoenix, Tucson, Albuquerque, Denver, Salt Lake City, Seattle, and San Francisco.

Cellexis was founded and built by adhering to honest business ethics and solid hard work. In 1995 we were honored with the "Entrepreneur of the Year" award granted by Inc. Magazine. We currently employ over 60 persons who depend on our ability to compete as a wireless reseller.

[1] Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order, WT Docket No. 97-82, FCC 97-342, rel. Oct. 16, 1997 ("*Restructuring Order*").

C Block Licensees Are Crucial to PCS Resale Opportunities

We disagree with the Opposition of AirGate Wireless, L.L.C. ("AirGate") regarding the state of resale in the U.S. According to AirGate, "wireless resellers have multiple carrier choices even without the C Block."[2] AirGate's simplistic characterization of the resale market is at odds with Cellexis' experience as one of the nation's largest providers of prepaid wireless phone service in the U.S. As Cellexis noted in its Petition for Reconsideration, our efforts to obtain fair resale terms have been frustrated on numerous occasions. We specifically noted that while we have attempted to work with the A and B block carriers, our experience has shown that many of these carriers thwart our growth efforts.[3]

The record in this proceeding is replete with filings from resellers which unequivocally support commercially reasonable restructuring alternatives, including a filing from the National Wireless Resellers Association.[4] Resellers are unified on this issue because, contrary to AirGate's Opposition, the C-Block represents the last, best hope for wireless competition in the U.S. marketplace.

Deferral

Cellexis continues to support the proposal put forth by the Small Business Administration ("SBA") which advocates a five year deferral. We believe this

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[2] *See* AirGate Wireless, LLC, WT Docket 97-82, December 29, 1997 at p. 4.
[3] *See* Cellexis International Inc., WT Docket 97-82, November 24, 1997.
[4] *See* Comments of The National Wireless Resellers Association, WT Docket 97-82, DA Docket 97-679, June 23, 1997.

balanced solution will accelerate network buildout and commercialization while keeping the Government whole in terms of principal and interest payments.[5]

The deferral option was supported by numerous C-Block licensees, Members of Congress, and even former Commissioner Quello.[6] We disagree with the Opposition for Petition for Reconsideration filed by Antigone Communications Limited Partnership and PCS Devco, Inc., which states that "the public treasury is harmed by every deferral of payments."[7] Under the plan proposed by the SBA, interest payments continue to accrete during the first five years, with the accreted interest and principal paid in full over the remaining five years; the Government is made whole in terms of interest and principal payments.

Under the plan adopted in the Restructuring Order, numerous C-Block licenses will be returned (or tied up in bankruptcy court), and reauctioned at a later date. It is virtually certain that the reauctioned licenses will yield a small fraction of the original bid amounts. Under this scenario, taxpayers *lose*; competition *loses;* and consumers *lose.* Incumbent operators are the only winner under this scenario.

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[5] *See* Jere W. Glover, Chief Counsel, U.S. Small Business Administration and Jenell S. Trigg, Assistant Chief Counsel, Telecommunications, to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, *ex parte* Letter, September 8, 1997.
[6] *See* Press Statement of Commissioner James H. Quello, August 25, 1997. ("I favor a plan that would allow our licensees to seek additional financing in the private markets by suspending the installment payments of principle and interest for some period of time. This is within our existing discretion, would be minimally intrusive, and comply with Congressional intent.")
[7] *See* Opposition for Petition for Reconsideration filed by Antigone Communications Limited Partnership and PCS Devco, Inc. ("Antigone/Devco"), WT Docket 97-82, December 30, 1997.

The table below summarizes the likely outcomes under both plans.

	SBA Plan	Restructuring Order Plan
License Build out	Begin immediately	Reauction not scheduled until September, 1998; Assuming a three month auction, and three months to grant licenses, the earliest that new licensees can begin building networks is March, 1999.
Proceeds to Treasury	Every penny of principal and interest originally pledged paid	Only a small fraction of original bid amounts will be collected
Administrative burden	No new auction needed	Reauction needed

Omnipoint Corporation has opposed a deferral of interest payments in this proceeding. However, we note that Omnipoint itself has been the beneficiary of a deferral in the pioneer's preference proceeding. In 1993, Omnipoint was awarded a final pioneer's preference for the development of IS-661 technology. The company received a Radio Station Authorization to operate in the New York MTA on December 13, 1994. However, the company was not required to make a payment on the license until April, 1996 pursuant to the terms of an Order released on March 8, 1996 – two years after the final grant of its pioneer's preference and sixteen months after its license grant. The company was obligated to pay for its license in quarterly installment payments over five years, with interest-only payments for the first two years and principal plus interest payments for the remaining three years.[8]

[8] *See* Omnipoint Corporation 1996 Annual Report, p. 30.

Omnipoint capitalized on the deferral period between its license grant by devoting its resources to the build out of the New York market. The company launched its New York market in November, 1996. Now, the company wants to deny other bidders the same benefit that it enjoyed.

Like Omnipoint, C-Block licensees could benefit from additional breathing room to focus on network build out and commercialization. The plan offered by the SBA will provide the time necessary for companies to begin building the networks that will offer real, facilities-based competition to consumers.

The Commission Should Discount Bids to Net Present Value and Provide for Use of Full Down Payment Under the Prepayment Option

We continue to believe that the Commission should take into account the net present value of C-Block bids, and that the penalty imposed on the down payment is overly punitive. All C-Block licensees factored the favorable Government financing into their bids. To demand that C-Block bidders pay the nominal net bid price, as some companies have suggested, is unreasonable and counter to the public policy goal of fostering increased opportunities for small businesses and minorities.

We believe that some companies that oppose the use of NPV under the prepayment option have a different agenda: to force C-Block licensees to return virtually all of their licenses so that such companies can win the licenses in a reauction. We believe that such self-serving filings do not result in a reasonable public policy outcome.

By charging the nominal value rather than the net present value, the Commission is, in essence, raising the effective price of the license. This provision will result in a substantial number of returned licenses, postponing a new competitor from entering the market. Furthermore, we contend that like the deferral option, requiring bidders to pay the nominal bid amount will yield the U.S. Treasury a substantially lower amount than the amount yielded in a reauction because bidders will be forced to return a greater number of high-priced licenses.

Consider the following hypothetical example. Suppose that the winning bidder in Dallas elects the Prepayment option. The winning bid for Dallas in the C-Block was approximately $291 million, or $67 per POP. Now assume that the winning bidder had $100 million on deposit in down payments at the FCC, after the 30% penalty. Under the current terms, this bidder would be required to muster $191 million dollars -- an enormous sum for even the most highly capitalized big business – and to forfeit all of its other licenses. Given that the company cannot raise the $191 million required to prepay for the Dallas license, the company is forced to return it.

On the other hand, suppose the Prepayment provision was modestly adjusted to provide the winning bidder the opportunity to pay the net present value of the nominal net bid, and to use its entire down payment. The net present value of the Dallas bid would be $174 million, or about $40 per POP. Without penalizing the down payment, the winning bidder would have $140 million on deposit. Therefore, the company would need to raise an additional $34 million, a significant but more manageable sum.

Now assume that the Prepayment provision is not changed, and that the winning bidder was forced to return the Dallas license. A number of factors likely would materially affect the amount bid in the reauction. For one, other licensees will have had a significant time-to-market advantage: the A- and B-Block high bidders will have been licensed for three and one-quarter years; the DEF licensees will have been licensed for one and one-half years. Furthermore, the DEF license prices were significantly lower than the C-Block bids. The F-Block net bid, for example, was approximately $16 million, or $3.70 per POP. And, because installment payments likely will not be offered in this auction, all participants must pay for their licenses upfront.

Even assuming the Dallas license fetched three times the net amount paid for the F-Block license (an unlikely scenario given the factors above), the reauction winning bidder will pay approximately $48 million, or $11.10 per POP and <u>$126 million less</u> than the original winning bidder was willing to pay under modestly adjusted terms.

The table below summarizes this example:

	No Change to Prepayment Option	**Modest Changes to Prepayment Option**
Build out	Begin immediately	Reauction not scheduled until September, 1998; Assuming a three month auction, and three months to grant licenses, the earliest that new licensees can begin building networks is March, 1999.
Proceeds to U.S. Treasury	$174 million	$48 million

The Commission has failed to articulate the public policy objective achieved by delaying the entry of new competition and the forfeiture of potentially billions of dollars. Requiring a bidder, as in the example above, to shed virtually all of its licenses and become a shadow of its former size, is punitive enough. Not utilizing the NPV, and requiring licensees to forfeit a portion of their down payment makes the Prepayment option commercially unreasonable.

Conclusion

Rapid build-out of the C block is necessary to further the Commission's goals of increased competition in the wireless industry. The Reconsideration order did not provide C block licensees with a commercially reasonable menu option to achieve this goal. We respectfully request the Commission to reconsider its decision.

Respectfully Submitted,

Larry L. Day